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IN THE UNITED STATES SUPREME COURT

OCTOBER TERM, 1974
No. 74-555

Loren G. Ishler

Petitioner

-v-

The Toledo Bar Association

Respondent

# PETITION FOR A WRITE OF CERTIORARI TO THE SUPREME COURT OF OHIO

Loren G. Ishler
324 Michigan St.
Toledo, Ohio 43614
PETITIONER

Joseph P. Sheehy
421 Huron St.
Toledo, Ohio 43624
Attorney for Respondent

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IN THE

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OCTOBER TERM, 1974

NO.

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LOREN G. ISHLER

Petitioner

-vs-

The Toledo Bar Association,

Respondent

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PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF OHIO

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Petitioner, herein, Loren G. Ishler, prays for a writ of certiorari to issue herein, to review the order of the Supreme Court of Ohio, entered on July 3, 1974, which order suspends the petitioner from the practice of law for an indefinite period of time.

## OPINIONS RENDERED IN THE LOWER COURT AND ADMINISTRATIVE AGENCY REPORTS

The opinion of the Ohio Supreme Court appears in 39 OH.St. 33 and is appended hereto as Appendix A. There were two reports filed by the Board of Commissioners on Grievances and discipline, which is an administrative agency created by the Ohio Supreme Court to conduct hearings and make recommendations on grievances filed against attorneys in Ohio, which reports are appended hereto and as Appendix B and Appendix C.

## GROUNDS FOR JURISDICTION

This appeal is brought to this court from an order and mandate of the Ohio Supreme Court entered on July 3, 1974, suspending the Petitioner from the practice of law in Ohio for an indefinite period of time, and from the order of the Ohio Supreme Court denying the Petitioner a rehearing on the said order of suspension, said order denying a rehearing having been

entered by the Ohio Supreme Court on July 31, 1974. No extension of time has been granted to petitioner, or stay granted to the petitioner, to allow this petitioner to file his petition for a writ of certiorari.

Jurisdiction is conferred upon this court by 28 U.S.C. 1957 and Rule 19 of this court.

QUESTIONS PRESENTED

1.) Did the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court and the Ohio Supreme Court violate the Petitioner's constitutional right of due process of law, and thereby deprive the Petitioner of his right or privelege to practice law in Ohio?

A.) The action by the Board of Commissioners on Grievances and Discipline of the Ohio Supreme Court in making a "Second Finding of Fact" not based upon a hearing as required by the Rules of Procedure prescribed by the Ohio Supreme Court.

B.) The Ohio Supreme Court certified the "Second Findings of Fact and report contrary to its own prescribed rules of procedure and thereby deprived the Petitioner of his right to procedural due process of law.

2.) Did the Board of Commissioners on

Grievances and Discipline of the Ohio Supreme Court violate the Petitioner's right of substantive due process of law by recommending a suspension of the Petitioner from the practice of law without making a finding that the conduct of the Petitioner was willful and when the evidence is completely lacking regarding any willfulness on the part of the Petitioner?

3.) Was the finding of misconduct and the penalty given the Petitioner, harsh, capricious and unreasonable?

4.) Was the Petitioner denied equal protection under the law when the Toledo Bar Association continued to pursue disciplinary procedure against the petitioner after the original complainant requested a withdrawal of the complaint?

## CONSTITUTIONAL PROVISIONS RULES AND REGULATIONS INVOLVED

UNITED STATES CONSTITUTION, ARTICLE XIV

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" Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the priveleges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or prop-

erty, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

RULES OF PRACTICE OF THE OHIO SUPREME COURT ( effective August 16, 1971 Amended to October 1, 1973)
Note after Rule XIV

" Although not included in the rules of practice set forth above, Rules XVII through XXIII remain in full force and effect. These rules will, at a later date, be renumbered as Rules of Administrative Procedure or Rules of Superintendance."

RULES OF PRACTICE OF THE SUPREME COURT OF OHIO ( As amended to May 15, 1970)

RULE XIX

" Section 1. These rules of professional conduct shall be binding upon all members admitted to the practice of law in the State of Ohio, and the willful breach thereof shall be punished by reprimand, by suspension or disbarment, as provided in Rule XVIII of the Rules of Practice."

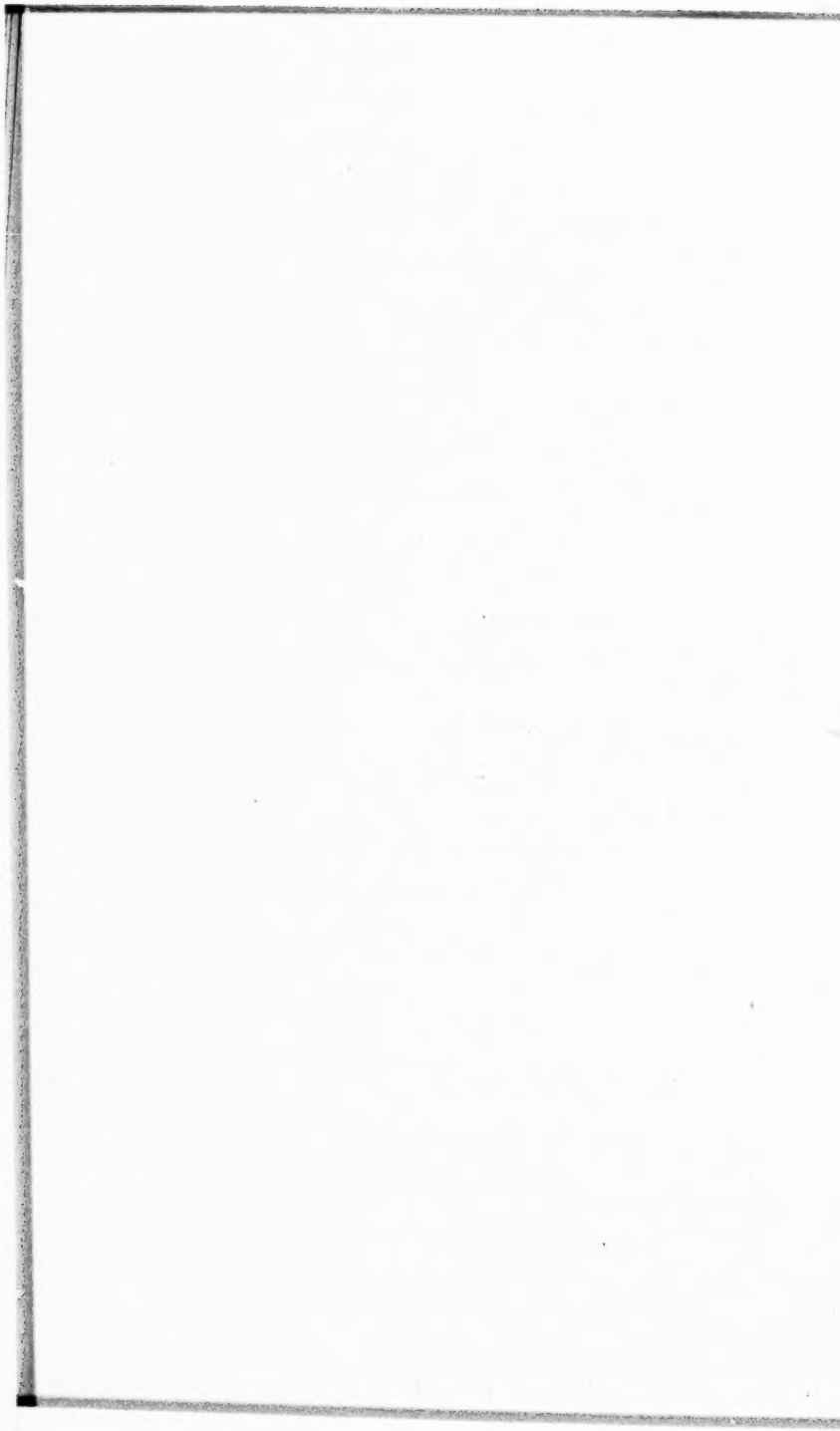
RULES OF PRACTICE OF THE SUPREME COURT OF OHIO ( As amended to May 15,1970)
RULE XVIII ( Infra, Appendix, page 48, Exhibit D )

SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO (Effective February 28, 1972, Amended to October 1, 1973 )

RULE V (Infra, Appendix, Page 50 , Exhibit E.)

STATEMENT OF THE CASE

The Petitioner has been a practicing attorney in the State of Ohio since June 1, 1956, having received his license to practice law in the State of Ohio on March 21, 1956. On December 10, 1970, the Petitioner issued a check to George and Charalen Rodriquez in the amount of $2927.76, which check was drawn on Petitioner's escrow account, styled "Special Account". This check was issued to disburse money received by the Petitioner from the sale of some property which is situated in Toledo, Ohio, said property having been owned by George and Charalene Rodriquez, they having moved to the State of Florida and left the Petitioner with the power to sell said property. The



sale of the property was consummated on October 12, 1970, however, the Petitioner was unable to disburse the money to the Rodriquez's until a determination of some tax arrearages was taken care of and until a certain land contract could be released. On or about December 10, 1970, the Petitioner wrote a disbursement check to Mr. & Mrs. Rodriquez, and on December 15, 1970, this check with a cover letter was mailed to Mr. & Mrs. Rodriquez with a breakdown of the money received from the sale of the property.

On or about January 18, 1971, the Petitioner's check was returned to Mr. & Mrs. Rodriquez's bank in Florida because of insufficient funds in the Petitioner's account. A short time later, Mr. Rodriquez contacted the Toledo Bar Association regarding the

returned check and an investigator contacted the Petitioner. It was not until this time that the Petitioner was aware of the fact that the check was returned, because the Petitioner's bank did not notify the Petitioner, nor did the bank in Florida notify the Petitioner regarding the check. Nor did the Petitioner's bank charge the Petitioner's account with any charge of any kind for said check, so it is obvious that the Petitioner had no way of knowing that the check had been returned.

By way of explanation, the Petitioner would like to point out, here, that at this time in the Petitioner's life, his domestic life at home was in a turmoil, the petitioner having been widowed with six (6) small children in 1962, had remarried a divorced lady who was the mother of two (2) children

who the Petitioner adopted and raised for eight (8) years until he was divorced in January, 1972. The domestic turmoil in the Petitioner's home led to the Petitioner neglecting his practice of law to the extent that he failed to reconcile his checking accounts for approximately five (5) to six (6) months, and it was the failure to do this that led to the check of Mr. & Mrs. Rodriquez being returned for insufficient funds, because on or about November 20, 1970 the Petitioner received a check in the amount of $3500.00 from a personal injury settlement and that check was placed in the wrong account by someone in the Petitioner's office. The person who received the personal injury distribution, received the money which belonged to Mr. & Mrs. Rodriquez and the personal injury draft was placed in the Petitioner's general account. This is a

perfectly understandable error, in that the Petitioner maintained both of his accounts in the same bank, and apparently whoever made the deposit merely picked up the wrong deposit slip, which has magnetic numbers on them.

After the mistake was discovered, the Petitioner paid the money to the Rodriquez's in April, 1971. Thereafter, Mr. Rodriquez wrote to the Toledo Bar Association and asked them to discontinue the pursuit of the complaint filed against the Petitioner because he understood the mistake and did not wish to pursue the matter, however, the Toledo Bar Association through its grievance committee continued to pursue the matter to the point that on November 14, 1972 a formal hearing was held in the presence of a panel of three (3) members of the Board of Commissioners on Grievances and Discipline of the Ohio

Supreme Court, pursuant to Rule XVIII of the Rules of Practice of the Supreme Court of Ohio, Section 10 ( Infra Appendix) and/or Rule V(10) of the Supreme Court Rules For The Government Of The Bar of Ohio ( Infra Appendix)

After the only hearing held on the grievance, which hearing was held on November 14, 1972, the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio was silent until May 15, 1973, at which time the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio issued an order to the three (3) man panel appointed to hear the evidence, referring the case back to the three man panel for additional evidence which order is appended hereto as Exhibit F, in the Appendix,.and which was made pursuant to the rules as prescribed by the Ohio Supreme Court.

However, instead of conducting a further hearing as prescribed by the Ohio Supreme Court Rules XVIII(14) and Rule V(14), the three (3) man panel began to write letters to the Petitioner and Petitioner's counsel and the counsel chosen by the Toledo Bar Association to prosecute the Petitioner, requesting further information. This fact is made apparent by the " Second report and findings of fact and recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio", which is appended hereto as Appendix Exhibit C. Apparently, according to the panel's report, the Respondent's counsel prepared some sort of recapitulation of some bank records and submitted them to the panel, who apparently entered the recapitulation into the evidence of the case, without affording the Petitioner or his counsel



to review the original records, or to cross examine anyone regarding such records. Neither the panel, nor the board followed the procedure prescribed by the Ohio Supreme Court.

Thereafter, on January 29, 1974, the Board of Commissioners and Discipline of the Ohio Supreme Court filed two (2) reports with the Ohio Supreme Court, the first report which is appended hereto and marked "Exhibit B, indicating fully and candidly that the evidence in the case was deficient, and the second report, appended hereto and marked " Exhibit C" which plainly punishes the Petitioner for failure to respond to letters written by the panel,which was not based upon a hearing as required by the Supreme Court of Ohio.

Thereafter, the Ohio Supreme Court issued an order to this Petitioner to show cause why the findings and recommendations of the Board of

Commissioners on Grievances and Discipline of the Supreme Court of Ohio should not be made the order of the court, and the Petitioner filed objections and a brief thereon. Finally, on July 3, 1974, the Ohio Supreme Court confirmed the report and recommendation of the Board and issued a mandate which immediately suspended the Petitioner from the practice of law in Ohio, a copy of which order is appended hereto as Exhibit G.

Petitioner then filed for a stay of the Ohio Supreme Court order until a motion for rehearing could be filed, which motion was denied by the Ohio Supreme Court.

Petitioner then filed his motion for a rehearing before the Ohio Supreme Court which was denied on July 31,1974.

## HOW FEDERAL QUESTION PRESENTED

The question of denial of due process of law by the Board of Commissioners on Grievance of the Supreme Court of Ohio was first raised in February, 1974, when the Petitioner submitted his objections to the findings and recommendations of the Board, which was the first opportunity that the Petitioner had to raise the issue in any court or proceeding, since the Petitioner had no knowledge of the denial of due process until January 29, 1974 when the Board filed its findings of fact and recommendations with the Ohio Supreme Court.

The issue was again raised by the Petitioner in his motion for a rehearing filed in the Ohio Supreme Court on July, 1974.

Needless to say, that the Ohio Supreme Court rejected the Petitioner's claim of denial of due process, because it did not rehear the Petitioner's case and reaffirmed the suspension of the Petitioner.

## REASONS FOR GRANTING THE WRIT OF CERTIORARI

The Petitioner has 25 years of his life dedicated to the study and practice of law, and he contends that whether the practice of law is a right or a privelege, he has a right under the constitution of the United States to be afforded due process of law. If it appears that the Petitioner was denied his rights of due process of law, then this court should grant a writ of certiorari and review this case on its merits.

The Petitioner refers the Court to its own decision in the case of

Spevack -vs- Klein, 385 U.S. 511 (1967) wherein this court announced the principle that the rights of citizens protected by the Fourteenth amendment of the United States Constitution extended to the States in proceedings to discipline attorneys. In that case, the Fifth amendment was in question, while in this case, the question is one of procedural and substantive due process. However, the same principle ought to apply to the application of the Fourteenth amendment in the Petitioner's situation, whether it be the application of the Fifth Amendment through the Fourteenth Amendment as it applies to the States, or whether it be the application of the right of procedural and substantive due process.

It is axiomatic that " an opportunity for a hearing is one of the essential elements of due process of

law ***" 16 Am.Jur.(2d)972, Constitutional Law, Section 569. The same Authority at page 973 makes the following statement:

> " Hence no one may be legally divested of his property unless he is allowed a hearing before an impartial tribunal, where he may contest the claim set up against him and be allowed to meet it on the law and show, if he can that it is unfounded."

Petitioner realizes that this court will only entertain jurisdiction in a case of this nature if it is exceptional. However, the Petitioner's case is an exceptional case. In the present case, the Ohio Supreme Court has set up rules governing the procedure for inquiry into grievances filed against an attorney. Petitioner does not contend that the Ohio Supreme Court cannot prescribe and put into effect rules as it has done in the present case. What the Petitioner is contend-

ing, is that the Board of Commissioners as well as the Ohio Supreme Court must follows the rules as prescribed by the Ohio Supreme Court. By a perusal of these rules which are appended hereto as Exhibit D and Exhibit E, the Court can see that according to Rule XVIII (10) and (14) in Exhibit D, the Board of Commissioners are to designate three (3) members of the Board as a hearing panel, when a complaint is filed with them. This three (3) member panel is then to hold a hearing on the complaint, which was done here. However, Rule XVIII (14)(Exhibit D in the Appendix and Rule V(14)(Exhibit E in the Appendix) prescribe the procedure to be followed for further inquiry, if upon review by the whole Board, no decision can be reached. The language in the two rules is as follows;

"(14) Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel.*****"

By the very language in Section XVIII(14) and V(14), the Board of Commissioners must follow one of three (3) procedures. In the instant case, the Board of Commissioners referred this matter back to the panel of three (3) members set up pursuant to Rule XVIII (10) and V(10) with specific instructions of obtaining information or evidence, if you please, as to the use to which money was put during the period between October 13, 1970 and April 6, 1971. Up to this point, the panel followed the rules of the Ohio Supreme Court, however, at this point the panel infringed upon the Petitioner's right of procedural due process by not con-

ducting a hearing as prescribed by the Ohio Supreme Court. Instead, the panel began to write letters to the Petitioner, his counsel and the person designated by the Toledo Bar Association to prosecute the Petitioner, which is apparent by the " Second Report and Findings of Fact"(Exhibit C in the Appendix) and based upon the Boards apparent displeasure with the answers or lack of answers to the panel's correspondence, the Board apparently lost its " sympathetic feeling" towards the Petitioner. It is a travesty of justice to presume that the Petitioner's right to practice law should depend upon sympathetic feelings of fifteen (15) persons, rather upon facts.

It is quite obvious that the panel and the Board failed to follow the procedures prescribed by the Ohio Supreme Court, and by reason thereof,

violated the Petitioner's right to have that procedure followed. As a result, it is equally obvious that the Board of Commissioners punished the Petitioner because they failed to follow the procedure prescribed by the Ohio Supreme Court.

It is the position of the Petitioner that he was denied substantive due process of law guaranteed to him by the Fourteenth Amendment to the United States Constitution, because the Board of Commissioner and the Supreme Court of Ohio made a finding of misconduct, not based upon evidence, but based upon personal attitudes of ire, not created by the Petitioner, but created by their own failure to follow the procedure prescribed by the Ohio Supreme Court. The Petitioner in support of his position on this point refers the court to the "First Report and Find-

ings of Fact" (infra, Appendix, Exhibit B) on the last page thereof, where the Board's conclusion of the facts presented to them is as follows:

> " The presentation of the case was deficient on the part of both the Relator and the Respondent, particularly the latter.*** The evidence was meager and the explanations as to the Relator were inadequate."

It is the position of the Petitioner that he was not obliged to produce any evidence because he could have refused to present any evidence whatsoever according to the case of SPEVACK -vs- KLEIN, 385 U.S. 511. The Petitioner had a right to remain silent. However, the Petitioner did not remain silent. Instead, the Petitioner gave his full cooperation to the panel who heard the case, and as a result, the Board of Commissioners indicted the Petitioner because he did not give enough evidence that they wanted to have. It is the



position of the Petitioner that when the Board of Commissioners made the finding that the Relator, Toledo Bar Association, presented evidence that was " deficient", then as a matter of substantive due process of law, teh Board of Commissioners was obliged to then and there dismiss the complaint filed against the Petitioner. This was not done.

In conclusion, while the third question is by its very nature a part of the first two questions, the Petitioner points out to this court that an indefinite suspension in Ohio is in many cases a permanent suspension, because in order to obtain reinstatement, after two (2) years has expired, reinstatement only occurs by the grace of the Toledo Bar Association. It is the practice of the Ohio Supreme Court to accept the whim of any objector, who

is usually from the Toledo Bar Association, and refuse to reinstate a suspended attorney if anyone who is a member of the so-called establishment complains. In addition, if another complaint should be persued against the Petitioner in the future, and as a result of that complaint, the Petitioner should be found to have violated the rules of practice, then in that event, the Petitioner would be permanently disbarred from the practice of law in Ohio. The order of the Supreme Court of Ohio is harsh, capricious and unreasonable, particularly in view of the fact that the Petitioner's client, who originally was aggrieved, made more than one request to the Toledo Bar Association to cease and desist the pursuit of the grievance.

It is the purpose of the Toledo Bar Association and the Ohio Supreme

Court to maintain a degree of tranquility between the members of the bar, and those laymen that are clients. When the client is satisfied, then the purpose of the grievance procedure and the penalties thereunder are gone, and the complaint should be dismissed, unless, as in this case, a few persons are "headhunting". The Petitioner's client was satisfied that there was no problem, however, those few members of the Toledo Bar Association who pursued the Petitioner in this matter, pursued the Petitioner in spite of that fact. It seems that the Toledo Bar Association could have pursued more important tasks, such as checking into an overcharge by the Advocates for Basic Legal Equality of more than $40,000.00 to Welfare recipients, which was charged to public funds, except of course, the attorney who directs that program is on the

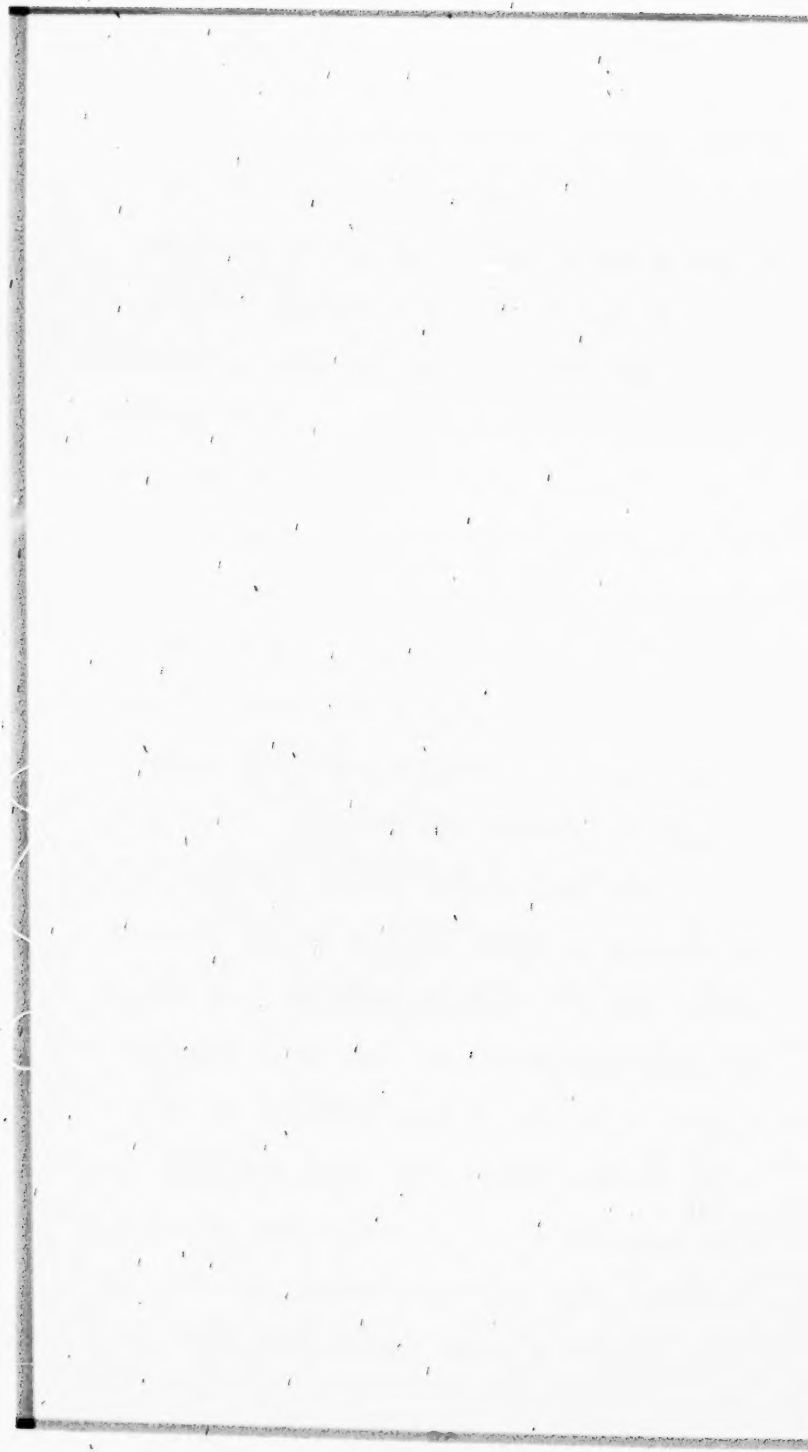
grievance committee of the Toledo Bar Association, and when you are a member of the grievance committee of the Toledo Bar Association, no grievance is ever pursued against him, no matter what he has done. Nor does the Toledo Bar Association pursue the "big law firms", because they own and operate the bar association.

I am sure that this court is aware of the fact, or perhaps the Court is not aware of the fact, that a minority of the members of the Toledo Bar Association, control that association, and those few people prejudice against the majority, in that the few determine against who they wish to pursue matters that are suspect of violations of the code of professional ethics. These summary determinations are not made based on fact, but who your are, so to speak. This practice is a deprivation

of the Petitioner's right of equal protection under the law, or conversely speaking equal enforcement of the law.

It has been the practice of the Toledo Bar Association to discontinue the pursuit of a complaint filed against an attorney when the complainant has indicated in writing that he is satisfied that the complaint has been resolved. However, in the present case, such written statement was made to the Toledo Bar Association and they continued to pursue the matter.

The last point which the Petitioner wishes to make to the court is that there was no finding made by the Board of Commissioners, or the Ohio Supreme Court that any of the conduct on the part of the Petitioner was willful. In the absence of such a finding of willfulness, the Supreme Court, by its own rule cannot punish the Petitioner.



The Petitioner refers the court to the RULES OF PRACTICE OF THE SUPREME COURT OF OHIO(Amended to May 15, 1970) RULE XIX, which reads as follow:

> " Section 1. These rules of professional conduct shall be binding upon all members admitted to practice in the State of Ohio, and the willful breach thereof shall be punished by reprimand, by suspension or by disbarment, as provided by Rule XVIII of the Rules of Practice."

It is quite obvious that the rule of the Ohio Supreme Court requires a finding of willfulness as a necessary factor in order to punish an attorney for a violation of the Rules as prescribed by the Ohio Supreme Court.

It is quite obvious from a perusal af the two reports filed by the Board of Commissioners that there was not any willfulness on the part of the Petitioner, on the contrary, the Board recognized that the Petitioner had

obviously made an honest mistake in the present case, rather than being willful in his conduct. In view of the facts, the Board of Commissioners as well as the Supreme Court erred in suspending the Petitioner.

## CONCLUSION

For the foregoing reasons, the Petitioner respectfully requests the Court to grant the petition for a writ of certiorari, issue the same and review this case on its merits.

Respectfully Submitted,

Loren G. Ishler

Loren G. Ishler
324 Michigan St.
Toledo, Ohio

EXHIBIT A

THE TOLEDO BAR ASSOCIATION vs. ISHLER

( Cite as Toledo Bar Association vs. )
( Ishler (1974) 39 Oh. St. 2d 33 )

Attorneys at law-Misconduct-Indefinite suspension from practice of law-Acts warranting-Improper use of client's funds.

( D.D. No. 74-200 Decided July 3,1974)

On certified report by the Board of Commissioners on Grievances and Discipline.

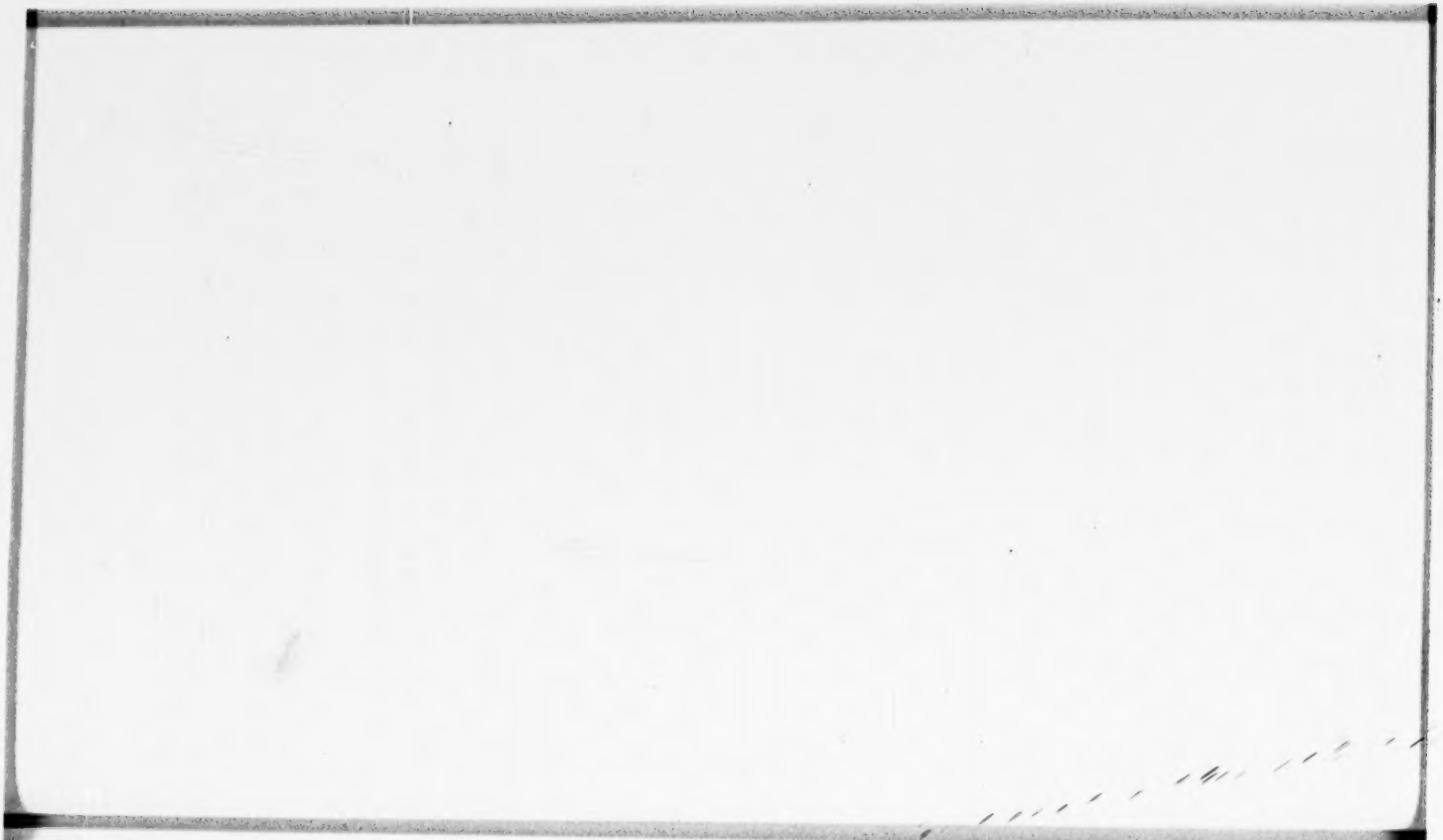
Relator, the Toledo Bar Association filed a complaint against Loren G. Ishler. Respondent, an attorney at law duly admitted to practice in Ohio, charging him with misconduct in that he failed to keep trust funds separate from his own; that he used trust funds for his own purposes; that he did not properly account for the funds of his client; and that he sent his client a check which was returned for insufficient funds.

Respondent filed an answer, denying the allegations of the complaint, and a panel consisting of three members of the Board of Commisioners on Grievances and Discipline was appointed to hear the cause.

It was stipulated that on October 12, 1970, respondent received a check from the First Federal Savings and Loan Association of Toledo in the amount of $3267.08 payable to the order of Loren G. Ishler, attorney for George M and

Charalene G. Rodriquez. This check represented the proceeds from the sale of an interest in real estate by Rodriquez. The following day, respondent deposited the check in his trust account in the First National Bank of Toledo, Ohio, which account is styled,"Loren G. Ishler, Special Account." A dispute concerning the responsibility for unpaid real estate taxes and an unrecorded land contract was resolved in late November, 1970. On December 15, 1970, respondent wrote to Mr. and Mrs. Rodriquez, who were residing in Florida, advising them of the disposition and sale, enclosing a statement concerning credits and expenses of the same and enclosing his check drawn on his special account, dated December 10, 1970, in the amount of $2927.76, payable to George Rodriquez and Charalene Rodriquez. The payees deposited the check in a Florida bank and on January 18,1971, it was returned by the First National Bank of Toledo as uncollectible. On April 6,1971, respondent sent another check drawn on his special account payable to George and Charalene Rodriquez in the sum of $2927.76 which was paid by the First National Bank of Toledo on April 15,1971. Respondent also sent the Rodriquezs a bank cashier's check in the amount of $75.00, which he calculated "to be a reasonable amount of compensation for the loss to you for the mistake made in my office."

Investigation revealed that, beginning on October 20, 1970, the balance in respondent's special account was reduced below the amount due the' Rodriquez s, and excepting for two days in November, the balance was insufficient



until the period from January 27, 1971, to February 5, 1971, when it again became insufficient until the period between February 24, 1971, to March 9, 1971. It did not become sufficient again until April 6, 1971

Respondent had also maintained a second checking account at the First National Bank of Toledo styled " Loren G. Ishler, Attorney at Law." Although the balance in the special account and the Attorney-at- Law account was $1230.76. The statements of both checking accounts showed considerable activity during the months in question.

Respondent did not obtain counsel until just prior to the hearing. Counsel argued that the domestic turmoil in respondent's home was responsible for his failure to properly account to his clients.

In consideration of the foregoing, the board determined that the respondent had failed to maintain the integrity and competence of the legal profession and recommended that he be indefinitely suspended from the practice of law.

Mr. Harold S. Green, Mr. Thomas A.Watkins. Mr. Walter H. Lehman and Mr. Joseph P. Sheehy, for relator. Mr. R. Martin Galvin, for respondent.

Per Curiam The respondent could give no reason for either the failure of his check to clear or the use of the special account funds other than the payment of same to clients. We conclude, from an examination of the transcript and exhibits, that the findings of the board have a thoroughly sound basis in fact; that respondent used for other purposes

at least a substantial part of the funds belonging to his clients; that he issued a check with insufficient funds in his special account which was maintained as his trust account; and that there was an unreasonable delay on his part, after the check was returned as uncollectible, in paying to his clients the money due them. We cannot countenance such conduct in the face of the Supreme Court's Rules for the Governement of the Bar, as defined in Section 5 of Gov.R.V and Canons 2 and 9 of the Code of Professional Responsibility as adopted by this court. It is our finding and judgment that the respondent was guilty of misconduct as alleged, and we confirm the recommendations of the Board of Commissioners on Grievances and Discipline that the respondent, Loren G. Ishler, be indefinitely suspended from the practice of law in Ohio.

Report confirmed and judgment accordingly .

O'Neill, C.J., Herbert,Corrigan, Stern, and Celebreeze, JJ., concur

EXHIBIT B

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

| | | |
|---|---|---|
| In re; | : | Case No. 177 |
| Complaint against | : | |
| Loren G Ishler, | : | First Report and |
| Respondent, | : | Findings of Fact |
| The Toledo Bar | : | |
| Association, | : | |
| Relator | : | |

The Complaint contains five specifications alleging that Respondent, (1) failed to maintain the integrity of the legal profession, (2) used for his own purpose certain funds belonging to his client, (3) failed to keep separate from his own funds certain funds belonging to his clients, (4) failed promptly to account for the funds of his client, and (5) sent to his client a check which was returned for insufficient funds. It alleges that thereby Respondent breached the Rules of Professional Conduct prescribed by Rule XIX of the Rules of Practice and Canons 1 and 9 of the Code of Professional Responsibility.

The case was heard on November 14, 1972. The evidence was stipulated excepting for answers elicited by questions from the panel members.

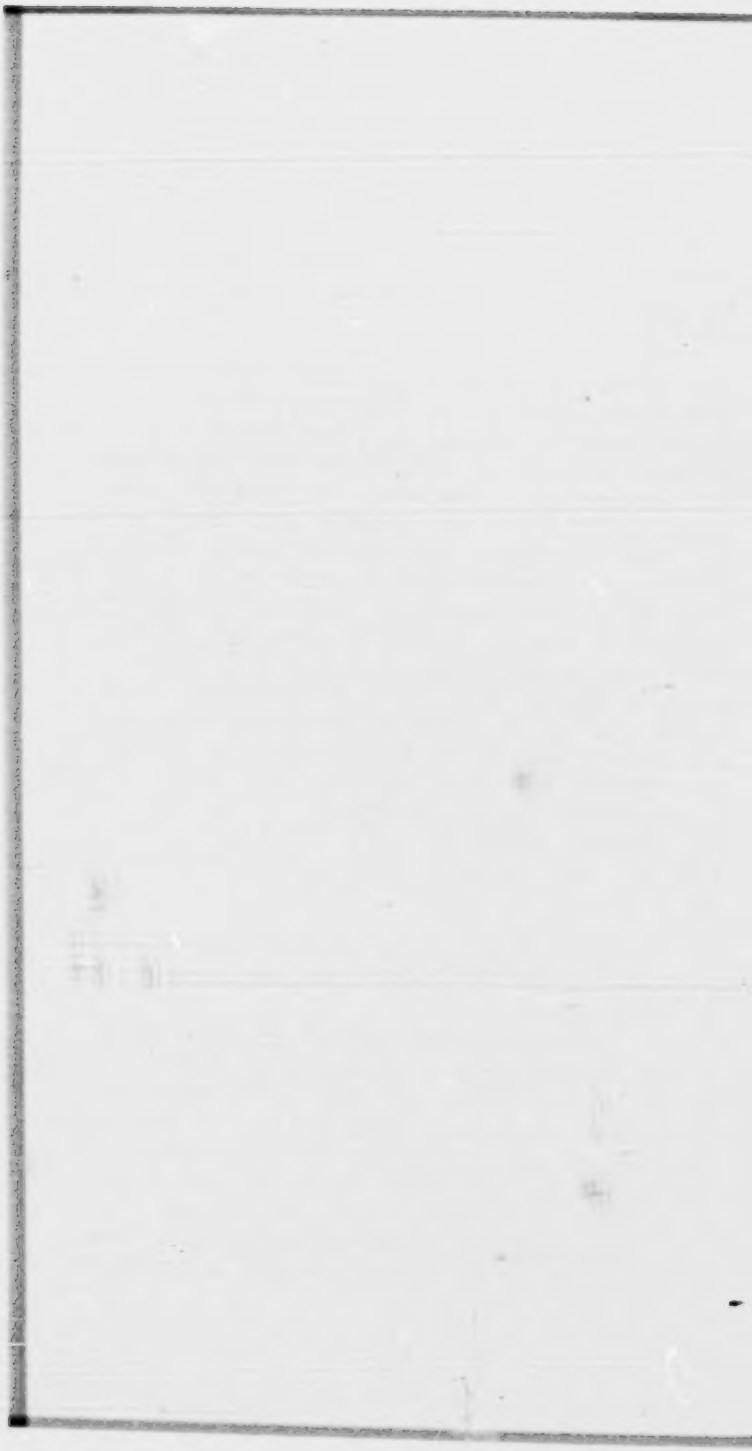
It was stipulated that on October 12, Respondent received a check from First Federal Savings and Loan Association of Toledo, in the amount of $3267.08 payable to the order of Loren

G. Ishler, Attorney for George M. Rodriquez and Charalene M. Rodriquez. This check represented the proceeds of a sale by George M. Rodriquez of an interest in real property. On the next day Respondent deposited the check in his trust accountin the First National Bank of Toledo, Ohio, which account is styled " Loren G. Ishler, Special Account." (R.6)

The sellers, Mr. and Mrs. Rodriquez who were living in Florida, had sold the property under a land contract from a Michigan couple who were having domestic troubles, and were separated and were difficult to locate and deal with. At the closing, at the request of the Michigan lawyer who represented one of the Michigan parties, Ishler agreed to hold the money until a problem as to the responsibility for unpaid real estate taxes could be determined and taken care of. The Rodriquezs had included taxes in their payments under the land contract. There was also an unrecorded land contract to be recorded. These matters were straightened out by the latter part of November. (R.38)

On December 15, 1970, Respondent wrote to Mr. and Mrs. Rodriquez as follows:

"Enclosed herewith please find a breakdown and closing statement regarding the sale of your property at 5764 Mantey Lane, Toledo,Ohio. You will note that my attorney fee was substantially more than $75.00 I quoted you, but this is because of the mixup in the Cupp matter, and we were required to make fifteen more contacts on this



case than we anticipated when the matter came into the office. we made quite a few telephone calls to Ann Arbor, Michigan, and to the former Mrs. Cupp, and all over the countryside to try to get a deed out of someone.

I trust this meets with your approval. I anticipate seeing you somewhere around the 26th or the 27th of December, 1970. Thank you very much for bringing me your Business.

Sincerely,

Loren G. Ishler

" George and Charalene Rodriquez
Boxx 117
Archer, Florida

SELLER'S CLOSING STATEMENT

| | |
|---|---|
| SELLING PRICE | $6,100.00 |
| CREDITS AND EXPENSES OF SALE | |
| Port Lawrence Title Co. | $89.00 |
| Conveyance Fee | 6.10 |
| Land Contract recording | 4.00 |
| Land Contract Assignment | 1.00 |
| Transfer fee | .35 |
| Deed Recording | 2.00 |
| Tax pro-rate | 56.50 |
| 6/20/70 tax bill | 100.32 |
| Attorney fee | 250.00 |
| Payoff Cupp | 2,662.87 |
| Total Credits and Expenses | $3,172.24 |
| Balance due Seller | $2,927.76" |

Respondent enclosed in the above letter his check drawn on his Special Account in the sum of $2927.76, dated December 10, 1970, payable to George

and Charalene Rodriquez, which payees deposited in a Florida Bank. The check was not paid when it was presented to the First National Bank of Toledo, and on January 18, 1971 it was returned as uncollectible to the Florida Bank. (Relator's Exhibit 4). The First National Bank of Toledo did not notify Respondent that the check had been dishonored.(R. 32)

About the time the check was returned, Soren Holmberg, and investigator for the Toledo Bar Association, called upon Ishler and told him that the check had been dishonored which was the first Ishler knew of it, according to Ishler.

On April 6, 1971, Ishler wrote to George and Charalene Rodriquez enclosing his check on his Special Account in the sum of $2927.76, dated April 6, 1971. It was paid by the First National Bank of Toledo on April 15,1971. Ishler also enclosed a cashier's check in the cum of $75.00. His letter (Relator's Exhibit 7) was as follows:

" George and Charalene Rodriquez
Box 117
Archer, Florida

Dear George & Charalene:

Enclosed herewith is the replacement check for my previous check which unfortunately was not good due to the fact that a deposit was made into my general account, inadvertently.

I appreciate your patience in waiting for me to remit this to you, the delay was caused by my overload of work, which made it almost impossible to get to the bank to put the money in the correct account. I finally had time to do so, and so I have forwarded you a replacement check. I have placed a stop payment order on the previous check.

I have also enclosed herewith a bank cashier's check for $75.00 which I calculate to be a reasonable amount of compensation for the loss to you for the mistake made in my office.

Please accept my apology for the delay. I am sorry that you felt prone to persistently write to the bar association about this matter. However, I know that every person must do what he feels is right. As a reminder, I might inform you that perhaps part of the time I spent during the hours that the bank was open, was spent answering to the bar association in response to your inquiries of them. As a matter of retrospect, direct contact to me might have been quicker.

Sincerely,

Loren G. Ishler"

On the 20th of October, 1970 the balance in the Special Account was reduced below the amount due Mr. and Mrs. Rodriquez and excepting for two days in November the balance was insufficient

until the period from January 27 to February 5, 1971. The balance again became insufficient until the period from February 24 to March 9. It did not become sufficient again until April 6 and thereafter.

Ishler had also maintained a second checking account in the First National Bank, such account being styled " Loren G. Ishler, Attorney at Law" (R.16). During the period from November 6, 1970 through March 5, 1971, this account varied in amount from a small amount to as much as $3601.61. However, on December 10, 1970, the date the first check was issued, the combined total balance of the Special account and the " Attorney at Law" account was only $1230.76. Both of these checking accounts were very active during the months in question.

Loren G. Ishler is 44 years of age. He graduated from Toledo University Law School in June, 1955 and began the practice of law in Toledo in 1956. (R27). He has been in the general practice of law and handles bankruptcy, divorce, personal injury and criminal casesamong other matters. He stated that he has been in the Supreme Court quite a few times and that he has tried to practice well.

When asked as to whether he knew his account was insufficient when he issued his check on December 10, 1970, he stated that he was not aware of it and that he was negligent. At this time he was having family problems which he said required much of his time.



Respondent stated that his first wife was killed in September, 1962 leaving him with five small children. Later he married a divorced lady with two children whom he adopted. About 1969 this woman and her children began to give Respondent a lot of trouble. The Child Study Institute intervened and Ishler employed psychiatrists and psychologists.(R 20;31). There was an attempted rape on one of his natural children by one of the step-children, a stepson stole his automobile and his wife insisted on working in a bar, leaving the care of the children up to him. He obtained a divorce from her in January 1972.(R31).

Another matter of interest is that during the last week in December 1970, Ishler went to Florida for a football game and to visit the Rodriqez as he stated he would do in his letter of December 15,(R.22). Ishler and Rodriquez spent a couple of days together down there.(R.32). They had been friends some years before Rodriquez lived in Toledo. Ishler had been Commissioner for four years of the Junior Football League in Toledo and Rodriquez was the Chief Official until he went to Florida. The record does not disclose as to whether Rodriquez knew while Ishler was visiting him that the latter's check of December 10 was not good. Although Rodriquez must have received the check soon after it was mailed, yet it would appear that while Ishler was visiting him he was not aware that the check was not good.

It was argued by Respondent's counsel that the domestic turmoil in



the Ishler home was largely responsible for Respondent's conduct and that his failure to properly account to his clients and allow his bank accounts to become depleted was not intentional nor dishonest but was due to his negligence. (R.22). Counsel for Relator conceded that Ishler had been having severe domestic and personal problems (R.26).

A letter from George Rodriquez to the Toledo Bar Association (Respondent's Exhibit A 1) was stipulated and is as follows:

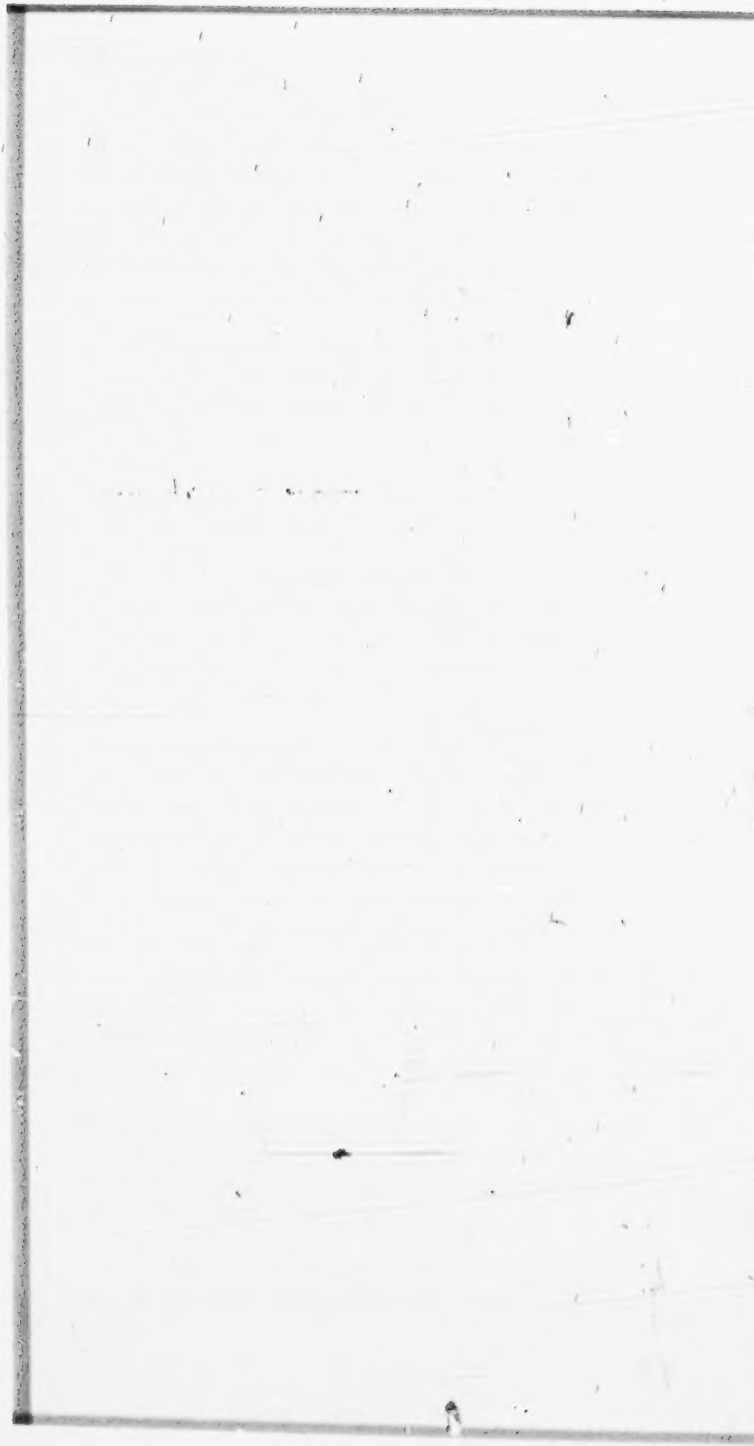
Hampton, Florida
March 18, 1972

Executive Committee of
The Toledo Bar Association
218 Huron St.
Toledo, Ohio

Gentlemen:

I just recently received a telephone call from Loren G. Ishler and a notice that he filed a petition for review regarding the grievance that I filed against him quite some time ago. I was amazed and surprised that this matter was still active since quite some time ago I wrote to the bar association and asked them to withdraw the complaint.

As I told the bar association some time ago, I am satisfied that my grievance has been resolved, and I do not wish to pursue this matter any further. I cannot understand how this matter has progressed without my



consent.

> Since this matter has been referred to this committee, I thought that perhaps a letter to you would prevent any further action in this matter. I do not wish for this matter to be continued any longer.
>
> Thank you for your cooperation. I trust that this is the last I shall hear about this matter.
>
> Sincerely,
>
> George Rodriquez"

Counsel for Respondent argued that this letter indicates that the relationship and state of mind between Ishler and Rodriquez and further that Rodriquez was satisfied and wished the matter dropped.

Ishler was asked as to why he waited until April to make the check good. He said he didn't know whether he should give the money to the Investigator for the Bar Association or to Rodriquez and further that for almost a month he was unable to contact the investigator.(R34) He also said that his office was being moved at that time, that the delay was due to a combination of events and further that he really had no excuse.(R33).

The presentation of the case was deficient on the part of both the Relator and the Respondent, particularly the latter. Respondent did not obtain counsel until shortly before the hearing.

The evidence was meager and the explanations as to the Respondent's conduct were inadequate. There was no dispute as to the evidence as was presented.

## FINDINGS OF FACT

The Board finds that upon the evidence submitted pertaining to the problem of pro-ration of taxes it was not unreasonable for Respondent to wait until December 1970 before sending the closing statement and check to his clients. However, the Board finds that Respondent used for other purposes at least a substantial part of the funds belonging to the Rodriquezs and that he issued his check of December 10, 1970 with insufficient funds in his Special Account which was regarded as his trust account. The Board further finds that there was an unreasonable delay thereafter on his part in paying to his clients the amount due them. The Board finds that Respondent breached the Rules of Professional Conduct prescribed by Rule XIX of the Rules of Practice and Canons 1 and 9 of the Code of Professional Responsibility.

Henry W. Houston
Chairman, Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio

William D. Radcliffe
Secretary, Board of Commissioners on Grievances and Discipline The Supreme Court of Ohio

EXHIBIT C

BEFORE THE BOARD OF COMMISSIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

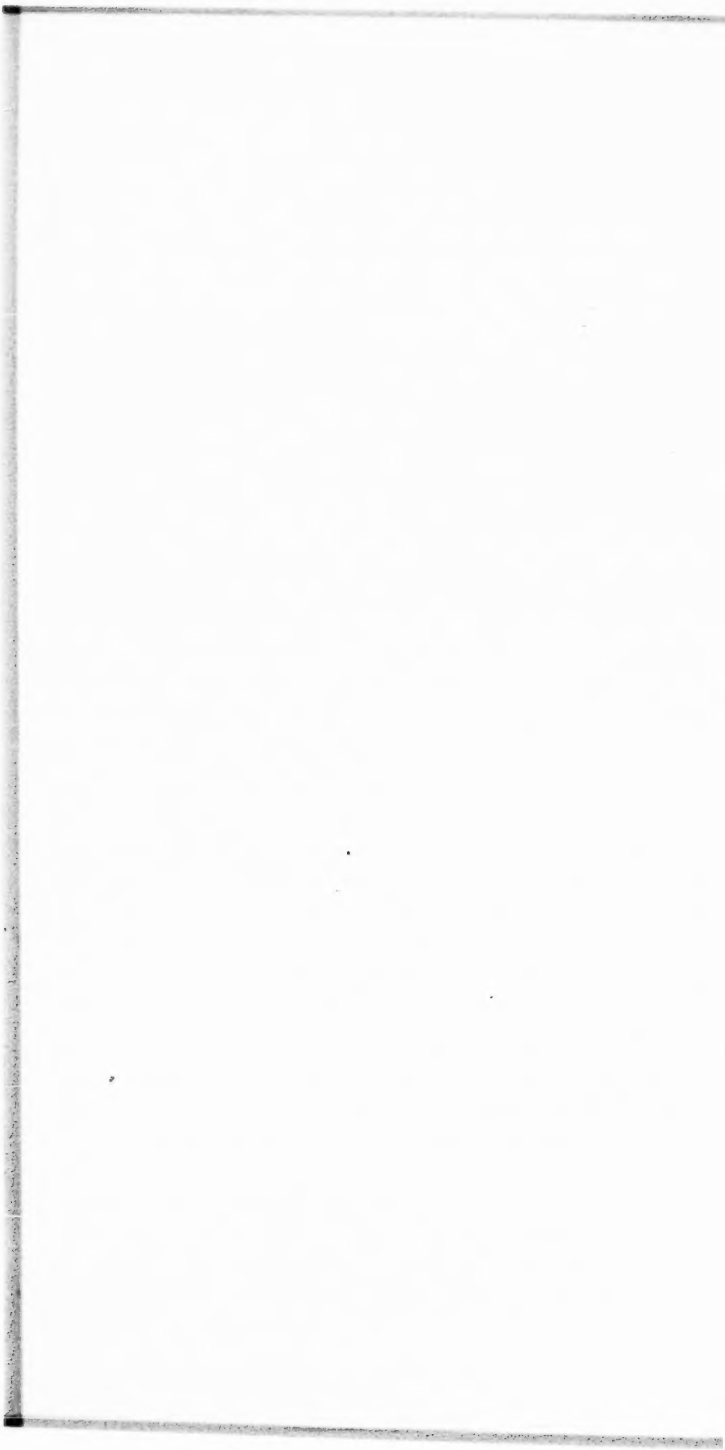
| | | |
|---|---|---|
| In re: | : | Case No. 177 |
| Complaint against | : | Second Report and |
| Loren G. Ishler, | : | Findings of Fact |
| Respondent, | : | and Recommendations |
| Toledo Bar Assoc- | : | of the Board of |
| iation | : | Commissioners on |
| Relator, | : | Grievances and Discipline of the Supreme Court of Ohio |

In accordance with the order of the Board directing that information be obtained as to the use which the Respondent made of the money withdrawn from his two checking accounts during the period from October 13, 1970 to April 6, 1971, the panel wrote on May 4, 1973 to the Relator, to the Respondent and to their respective Counsel requesting the desired information. No response having been received, thereafter on July 19, 1973, teh Panel again wrote to the Relator, Respondent and their counsel requesting the information. No response was received and a further request was made on August 30,1973. It was not until September that a partial recapitulation of the two accounts were received from the Relator, one account covering the period to February 23,1971 and the other to February 26,1971. They were prepared by Counsel for Relator from copies of checks furnished by the bank

and were approved by Counsel for Respondent . Mr. Ishler could not or would not furnish either his cancelled checks or register, according to Counsel for Relator. The recapitulation of the escrow account listed 50 checks. Of these, some were obviously for personal expenditures and some gave no explanation of the purpose of the expenditures. The recapitulation of the general commercial account listed 82 checks. Of these only a few gave an explanation as to the purpose of the expenditures. Five checks have been returned because of insufficient funds in this account.

Inasmuch as all of the requested information had not been furnished as ordered by the Board, on September 18, 1973, the Panel again requested a complete list of checks and of the use made of the money during the entire period of April 6,1971 when restitution had been made to the aggrieved party. The Panel advised Respondent that they considered that it was his primary duty to furnish this information. On October 29, 1973, Counsel for Respondent said he made a search with Mr. Ishler of the latter's checking accounts and that they did not have the requested records. He offered to contact the bank and obtain copies of the records. Judging from the past dilatory conduct of the Respondent, the Panel thought that to grant a further extension would only prolong this matter indefinitely.

The Panel was at first inclined to be sympathetic with the Respondent inasmuch as he had been having family problems at the time of his defalcation.



However, he has been so indifferent to the requests of this Board that the Panel can no longer feel sympathetic. There has been a disregard and contempt of the orders of the Board and a complete lack of cooperation on the part of the Respondent.

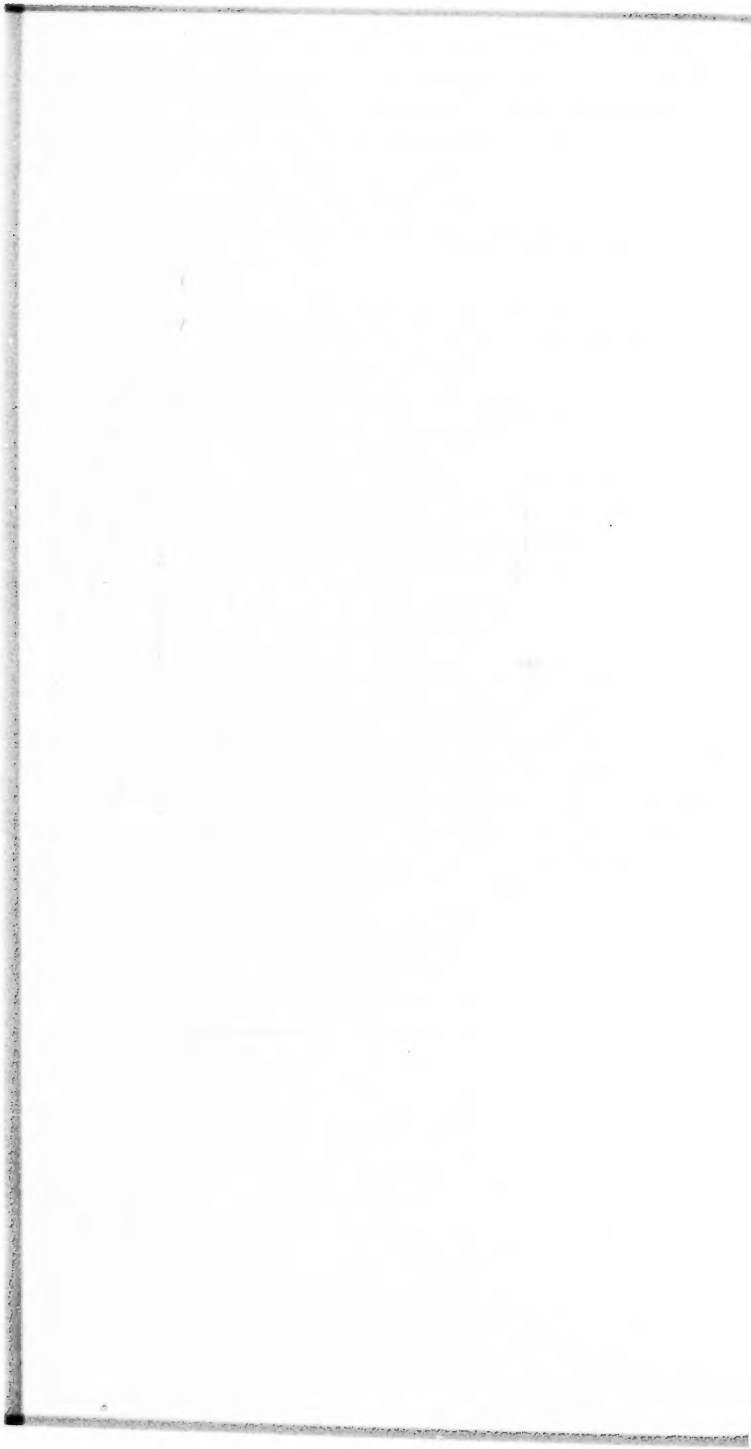
The Respondent had admittedly commingled funds of his client with his personal funds and used them for his own purposes. He issued a check to his client which was returned because of insufficient funds. More than three months elapsed before he remitted the money to his client. Respondent has failed to maintain the integrity and competence of the legal profession.

RECOMMENDATION

It is the recommendation of the Board of Commissioners on Grievances and Discipline of the Supreme Court of Ohio that the Respondent, Loren G. Ishler, be indefinitely suspended from the practice of law because of his misconduct.

Henry W. Houston
Chairman, Board of Commisioners on Grievances and Discipline of the Supreme Court of Ohio

William D. Radcliff
Secretary, Board of Commisioners on Grievances and Discipline of the Supreme Court of Ohio



## APPENDIX D

## RULES OF PRACTICE OF THE SUPREME COURT OF OHIO( As Amended to May 15, 1970)

## RULE XVIII

## DISCIPLINARY PROCEDURE

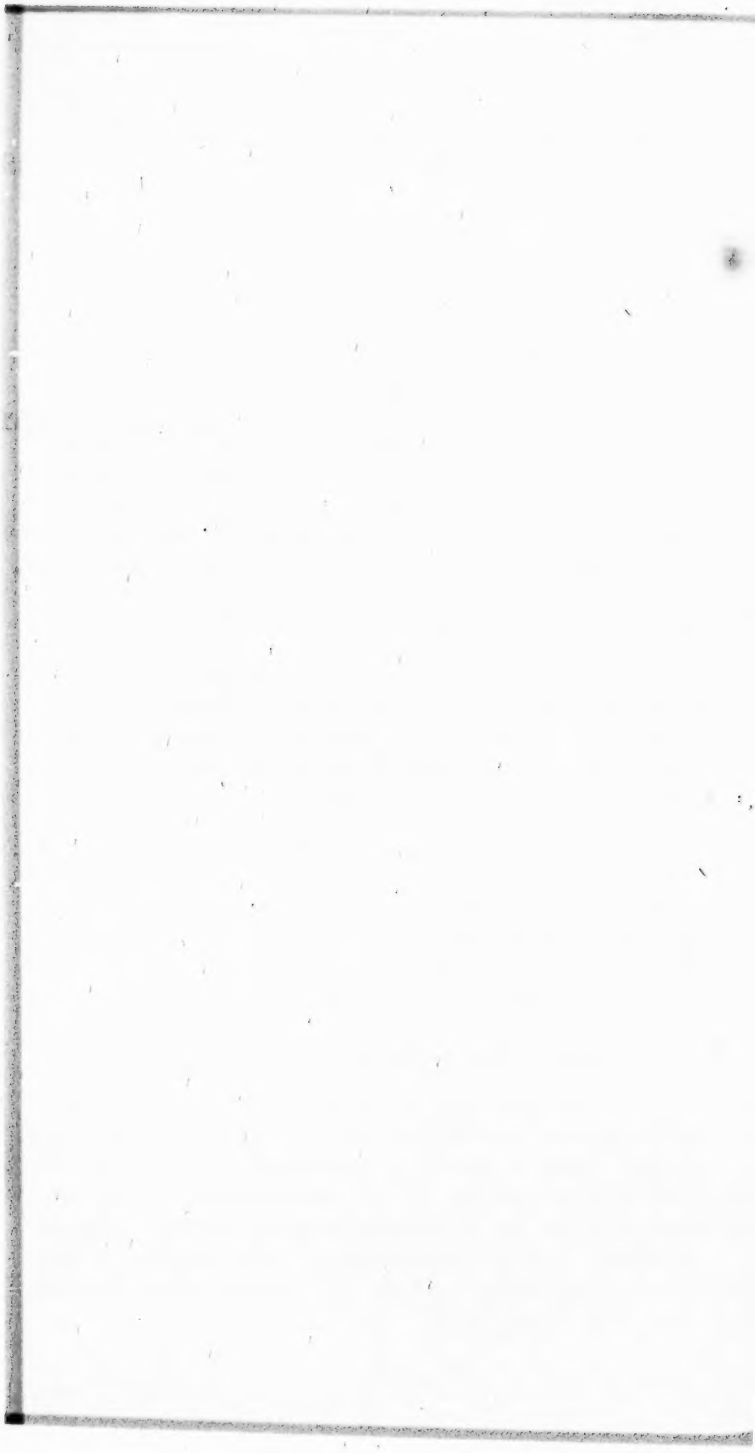
10.) Hearing by panel of Three Commissioners.

After respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice, by a panel of Commissioners appointed by the chairman of said Board of Commissioners, who shall designate one of the members of such panel as chairman of the panel. Such panel shall consist of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majprity of such panel shall constitute a quorum for all purposes.

The chairman of the panel may have a transcript prepared of the testimony taken at each formal hearing and the cost thereof shall be paid by the secretary of the Board of Commissioners, or taxed as costs.

11.) Dismissal of Complaint

If the panel finds that the complaint or evidence is insufficient, the panel shall make a certified report of the rpoceedings and recommendations to the Board of Commissioners which shall review the proceedings, and shall dismiss the complaint, or refer the matter



back to the panel for further hearing or the administering of a private reprimand, or may proceed upon the certified report of the proceedings before the panel.The Secretary of the Board of Commissioners shall give notice of a dismissal to the Respondent, all counsel of record, the Ohio State Bar Association, and the local bar association or associations of the county or counties in which the Respondent resides and maintains his office, and of the county or counties from which the complaint arose.

14.) Review by Entire Board of Commissioners; Board to Administer Private Reprimand.

Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may order a further hearing to be presented before said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the Board of Commissioners determines that a private reprimand shall be administered it shall administer such private reprimand. If the complaint is dismissed, or a private reprimand is administered, such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the panel that heard the matter.

EXHIBIT E

SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO
(Effective February 28,1972, amended to October 1, 1973)

RULE V

10.) Hearing by Panel of Three Commissioners.

After Respondent's answer has been filed, or the time has expired within which Respondent was required to file such answer, a formal hearing shall be held, upon reasonable notice, by a panel of Commissioners appointed by the Chairman of said Board of Commissioners, who shall designate one member of such panel as chairman of the panel. Such panel shall consist of three (3) Commissioners, no one of whom shall be a resident of the district from which such complaint originated. A majority of such panel shall constitute a quorum for all purposes.

The chairman of the panel may have a transcript prepared of the testimony taken at each such formal hearing, and the cost thereof shall be paid by the Secretary of the Board of Commissioners, or taxed as costs.

11.) Authority of Panel; Dismissal or Private Reprimand.

If the panel finds that the complaint or evidence is insufficient to base a charge of misconduct or that the complaint or evidence supports a charge of misconduct for which a private reprimand should be administered, the panel may order that the complaint be

dismissed or administer such private reprimand at the time of the hearing. Such action shall be reported to the Secretary of the Board of Commissioners who shall give written notice of the action taken to the Board of Commissioners, the Respondent, all counsel of record, the Ohio State Bar Association, and the local bar association or associations of the county in which the Respondent resides and maintains his office and the county from which the complaint arose.

14.) Review by Entire Board of Commissioners; Board to Administer Private Reprimand.

Upon review, said Board of Commissioners may refer the matter back to the panel for further hearing or may order a further hearing to be presented before the said Board of Commissioners or may proceed upon the certified report of the prior proceedings before the panel. Upon the final review, the Board of Commissioners may dismiss the complaint or find that the Respondent is guilty of misconduct. If the Board of Commissioners determines that a private reprimand shall be administered it shall administer such private reprimand. If the complaint is dismissed, or a private reprimand is administered, such action shall be reported to the Secretary of the Board of Commissioners, who shall notify the same persons and organizations that would have received notice if the complaint had been dismissed by the panel that heard the matter.

EXHIBIT F

BEFORE THE BOARD OF COMMISIONERS
ON
GRIEVANCES AND DISCIPLINE
OF
THE SUPREME COURT OF OHIO

| | | |
|---|---|---|
| In re; | : | Case No. 177 |
| | | ENTRY |
| Complaint against | : | |
| | | Filed: May 15, |
| Loren G. Ishler | : | 1973 |
| | | Board of Comm- |
| Respondent | : | issioners on |
| | | Grievances and |
| Toledo Bar Assoc. | : | Discipline |
| | | William D. |
| Relator | : | Radcliffe, |
| | | Secretary |

It is hereby ordered that the findings of Fact and Recommendation of the Hearing Panel in the above captioned cause be referred back to the Hearing Panel composed of William G. Coultrap, George D. Young and Martin Goeffel with instructions to get specific information as to the use to which the money withdrawn from Respondent's two checking accounts was put during the period between October 13, 1970 and April 6, 1971 when Respondent's checks to Mr. & Mrs. Rodriquez were honored because of insufficient funds.

The hearing panel is to report back to the Board as soon as possible.

George D. Young
Chairman, Board of Commissioners on Grievances and Discipline of The Supreme Court of Ohio

EXHIBIT G

IN THE SUPREME COURT OF OHIO

| | | |
|---|---|---|
| State of Ohio | : | The Supreme Court |
| City of Columbus | : | of Ohio of the |
| | : | term of January, |
| Toledo Bar Assoc. | : | 1974 |
| Relator | : | ON CERTIFIED REPORT |
| | : | BY THE BOARD OF COMM- |
| -v- | : | ISSIONERS ON GRIEV- |
| | : | ances and Discipline |
| Loren G. Ishler | : | |
| | : | D.D. No. 74-2 |
| Respondent | : | |

It appearing to the court that the Board of Commissioners on Grievances and Discipline filed its Final Report in this Court on January 30, 1974, recommending that the respondent, Loren G. Ishler be indefinitely suspended from the practice of law, pursuant to Rule V, section 6b of the Supreme Court Rules for the Government of the Bar of Ohio, and it further appearing that respondent filed objections to the Final Report of the Board of Commissioners on Grievances and Discipline, this cause was argued by Counsel. On consideration thereof, it is ordered and adjudged by this Court that the report of the Board be confirmed and respondent suspended from the practice of law for an indefinite period.

The respondent, Loren G. Ishler, is hereby ordered to cease and desist from the practice of law in any form and is forbidden to appear on behalf of another before any court, judge,

commission, board, administrative agency or other public authority. It is further ordered that he be forbidden to counsel or advise, or prepare legal instruments for others or in any manner perform services of any kind for others which would constitute the practice of law. He is also forbidden to hold himself out to another or to the public as being authorized to perform legal services, and he is hereby divested of each, any and all of the rights, priveleges and prerogatives customarily accorded to a member in good standing of the legal profession of Ohio.

It is further ordered that the respondent, Loren G. Ishler, surrender his certificate of admission to practice to the Clerk of this Court forthwith and that his name be stricken from the rolls of attorneys maintained by this court.

It is further ordered that the respondent, Loren G. Ishler, pay the costs of these proceedings taxed in the amount of Four Hundred Thirteen Dollars and fifty seven cents. ($413.57).

It is further ordered that the Clerk of this Court issue certified copies of this entry as provided for in Section 19, Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.

APPROVED: C. William O'Neal, Chief Justice

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Petition for Writ Of Certiorari was mailed with first class postage prepaid to Joseph P. Sheehy, attorney for Respondent at 421 Huron St., Toledo,Ohio 43624 on this 4 day of ~~October~~ NOVEMBER, 1974.

Loren G. Ishler

Loren G. Ishler
Petitioner